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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  <b>007034.00037</b>						
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">Application Number  <b>10/034,886</b></td><td style="width: 50%; padding: 5px;">Filed  <b>12-28-2001</b></td></tr><tr><td colspan="2" style="padding: 5px;">First Named Inventor  <b>Jay D. Hodson</b></td></tr><tr><td style="padding: 5px;">Art Unit  <b>1745</b></td><td style="padding: 5px;">Examiner  <b>Rhee, Jane J.</b></td></tr></table>		Application Number  <b>10/034,886</b>	Filed  <b>12-28-2001</b>	First Named Inventor  <b>Jay D. Hodson</b>		Art Unit  <b>1745</b>	Examiner  <b>Rhee, Jane J.</b>
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Art Unit  <b>1745</b>	Examiner  <b>Rhee, Jane J.</b>							
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input type="checkbox"/> attorney or agent of record. Registration number _____</p><p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>43,446</u></p></td><td style="width: 50%; vertical-align: top; padding-left: 20px;"><p>_____ /Paul M. Rivard/ Signature</p><p>_____ Paul M. Rivard Typed or printed name</p><p>_____ (202) 824-3000 Telephone number</p><p>_____ November 10, 2006 Date</p></td></tr></table> <p><small>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</small></p>			<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>43,446</u></p>	<p>_____ /Paul M. Rivard/ Signature</p> <p>_____ Paul M. Rivard Typed or printed name</p> <p>_____ (202) 824-3000 Telephone number</p> <p>_____ November 10, 2006 Date</p>				
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<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>								

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

### **Arguments in Support of Pre-Appeal Request for Review**

Claims 31-50 and 70 are pending. Claims 31-50 and 70 stand rejected under 35 U.S.C. § 112, first paragraph. Claims 31 and 38-46 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Huizinga U.S. Patent 5,001,325 (“Huizinga”). Claims 32-37, 49, 50, and 70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huizinga in view of Schlaeppi EP 596,747 A1 (“Schlaeppi”).

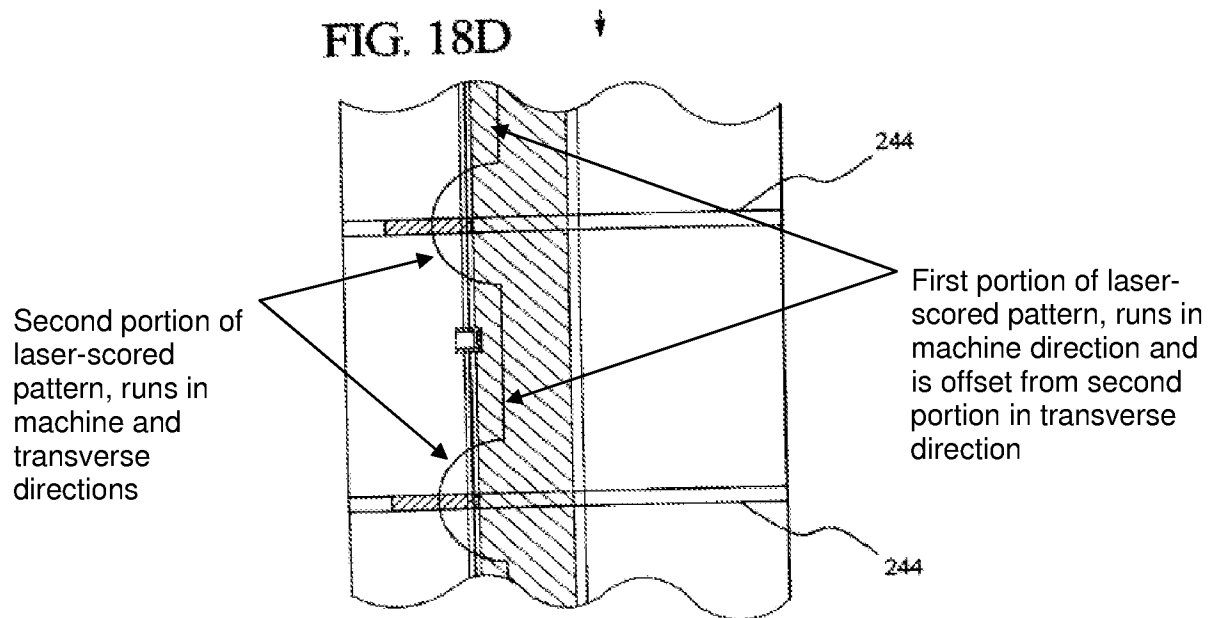
#### **Rejection Under 35 U.S.C. § 112**

The Final Office Action asserts that the disclosure at page 14, lines 2-3 which reads, “The laser beam is then applied to a surface of the web to score the web in both the machine and transverse directions,” does not provide an adequate written description for the limitation in claim 31 of a first laser-scored pattern in the first surface of the flexible film but not in the second surface. With respect to claim 39, the Final Office Action asserts the originally filed disclosure does not provide a description of score patterns having a second portion disposed from a first portion in the transverse direction. In this regard, the Final Office Action contends that the term “second portion” does not appear in the specification.

Section 112 does not require *in haec verba* support for claimed subject matter. Instead, the proper inquiry is whether the originally filed disclosure reasonably conveys that the inventor had possession of the claimed invention. *Cordis Corp. v. Medtronic Ave., Inc.*, 339 F.3d 1352, 1364, 67 U.S.P.Q.2d 1876 (Fed. Cir. 2003).

The Final Office Action improperly engages in a hyper-technical linguistic analysis of the specification rather than looking to the substance that the originally filed disclosure reasonably conveys to the skilled artisan. It would have been abundantly clear to the skilled artisan that the

inventors were in possession of a multilayer flexible film having a laser-scored pattern applied to a surface (or a “first” surface) of the film, i.e., one but not both of the film’s two surfaces, in both the machine and transverse directions, as claimed in claim 31. With respect to claim 39, it also would have been abundantly clear that the laser-scored pattern has a first portion and a second portion, with the first portion disposed from the second portion in the transverse direction. Each of these features is clearly shown, for example, in Fig. 18D, which is reproduced below.



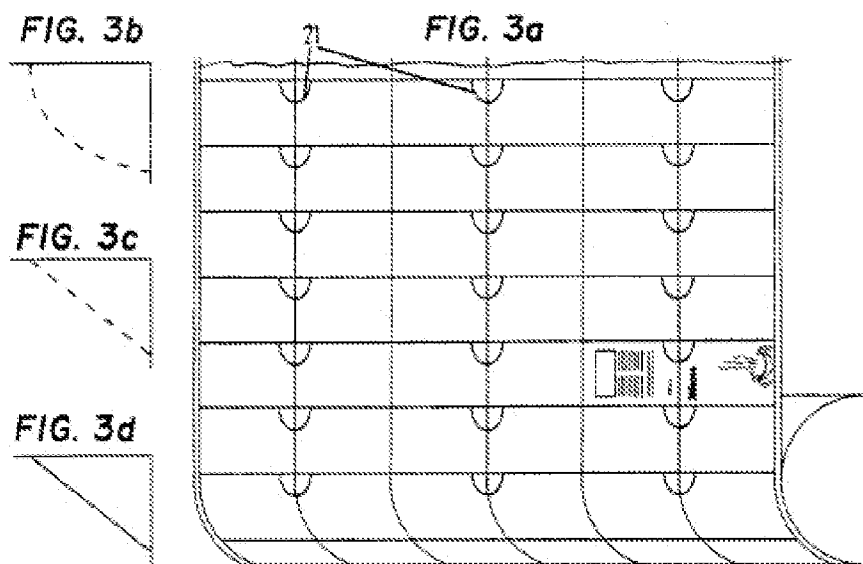
Additional disclosure is found throughout the specification, *e.g.*, at page 13, lines 27-30, which discloses, “The laser beam may cut the **first curved section** 52a, 152a of pouches 1, 100, respectively, followed by the **straight portions** 52b, 152b, followed by **the second curved portions** 52c, 152c.” (emphasis added). Thus, even if an *in haec verba* standard were used, the specification does contain the words “second” and “portions” with respect to the laser-scored pattern. Of course, *in haec verba* is not the proper standard. *Cordis*, 339 F.3d at 1364, 67 U.S.P.Q.2d at 1876. The § 112 rejection is improper and should be withdrawn.

Rejection Under 35 U.S.C. § 102(b)

To anticipate, a single prior art reference must disclose all elements of a claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986).

Huizinga is cited as describing a flexible thermoplastic polymeric film having a plurality of layers and a laser-scored line (21) disposed in the machine and transverse directions in a first surface of the film. The Final Office Action points to column 3, line 63, which states the score line “may have a continuous or discontinuous form,” and apparently interprets this as meaning the score line can run continuously in the machine direction. Applicants respectfully disagree.

In the embodiment of Figs. 2a-3d, the score lines 21 have “approximately the form of a semi-ellipse.” (column 3, lines 60-64). Contrary to the Final Office Action’s assertion, the score lines do not run continuously in the machine direction, as claimed in claim 31. Huizinga uses the term “continuous” to refer to unbroken score lines 21, as shown in Figs. 3a and 3d, and “discontinuous” to refer to perforated lines, as shown in Figs. 3b and 3c.



The remaining embodiments of Huizinga likewise fail to disclose or suggest a laser-scored pattern that forms a line of weakness running continuously in the machine direction. For example, the score lines 21 in the embodiment shown in Figs. 4a-5 clearly are discontinuous in the machine direction.

The Final Office Action apparently takes the position that claim 31's limitation that the score patterns run continuously in the machine direction is a process limitation not entitled to weight in a claim directed to an article of manufacture. Applicants respectfully submit that claim 31 defines an article of manufacture having a particular combination of structural features that is not taught or suggested by the prior art, for reasons argued above, without regard to the process used to make it.

At least for these reasons, Huizinga fails to describe or suggest the flexible film of independent claim 31 or claims 38-46 dependent thereon. Reconsideration and withdrawal of the § 102(b) rejection are respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

The Final Office Action concedes that Huizinga does not describe or suggest a second layer which does not have a laser-scored pattern etched therein, as claimed in claim 35, a first layer constructed of the materials identified in claims 32 or 36, or a first layer which is a barrier layer as claimed in claim 37. Schlaeppli is cited as disclosing an outer layer of oriented polypropylene or a barrier layer such as metal foil for the purpose of providing a multilayer flexible packaging film. The film is said to have a scored pattern etched into a first layer but not a second layer to effect easy opening of the package.

Schlaepi does not describe a flexible film having a laser-scored pattern that forms a line of weakness running continuously in the machine direction. Schlaepi instead discloses forming slits to form an interrupted or discontinuous score line (see, e.g., column 5, lines 5-14). At least for this reason, Schlaepi fails to remedy the deficiencies of Huizinga as discussed above. Dependent claims 32-37, 49, 50, and 70 are allowable over Huizinga and Schlaepi, taken alone or in combination, for at least the same reasons argued above with respect to independent claim 31.

### Conclusion

The specification provides an adequate written description of the invention by reasonably conveying to the skilled artisan that the inventors were in possession of the invention as now claimed. None of the cited references, taken alone or in any combination, discloses or suggests the flexible thermoplastic polymeric film as claimed in claims 31-50 and 70. In view of the foregoing, reconsideration and withdrawal of each of the outstanding rejections are respectfully requested.

Respectfully submitted,

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Date: November 10, 2006

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